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August 13, 2021

BY ECF

Honorable Valerie E. Caproni
 United States District Judge
 Southern District of New York
 40 Foley Square
 New York, NY 10007

Re: *L.B. v. New York City Department of Education*, No. 21-CV-1033 (VEC)

Dear Judge Caproni:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York, Georgia M. Pestana, attorney for the Defendant New York City Department of Education in the above-referenced action. I write pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure and paragraph 5 of Your Honor's Individual Rules of Practice, to respectfully request leave to file under seal the certified copy of the administrative record underlying this action. The complete administrative record is comprised of the annexed Exhibits 1-6, with Exhibits 1 and 2 concerning the proceeding before the State Review Officer ("SRO") and Exhibits 3-8 concerning the proceeding before the Impartial Hearing Officer.¹

This action is based on an administrative proceeding brought pursuant to the Individuals with Disabilities Education Act ("IDEA"). The record of the underlying proceeding is replete with confidential information, including the name, date of birth, and other pedigree information of the minor student, E.B., on whose behalf this action is brought. This information should not be made public in compliance with Rule 5.2(a). *See* Fed. R. Civ. P. 5.2(a).

Additionally, the record contains "personally identifiable information" describing E.B.'s medical history and disabilities, in addition to E.B.'s educational records and information detailing the student's educational progress and history. These materials are confidential under the IDEA and the Family Educational Rights and Privacy Act (FERPA). 34 C.F.R. § 99.3 (defining

¹ Defendant will provide an index of these documents early next week.

personally identifiable information under FERPA), and § 300.32 (including a “list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty” as personally identifiable information under IDEA). Additionally, as the underlying administrative proceeding is presumptively closed to the public pursuant to 34 C.F.R. § 300.512(c)(2), all documents recounting the proceeding should themselves be deemed confidential. *Id.* (permitting parents to choose whether a hearing is open or closed to the public). “For these reasons, courts in this Circuit have routinely allowed administrative records underlying IDEA cases to be filed under seal to protect the privacy interests of minor child plaintiffs.” *L.B. v. New York City Dept of Ed*, No. 15-3176, 2015 U.S. Dist. LEXIS 127081, *2 (S.D.N.Y. Sept. 22, 2015) (citing *C.L. v. Scarsdale Union Free Sch. Dist.*, 913 F. Supp. 2d 26, 30 (S.D.N.Y. 2012) and *A.M. ex rel. Y.N. v. New York City Dep't of Educ.*, 964 F. Supp. 2d 270, 277 (S.D.N.Y. 2013)). Therefore, Defendant believes that this information is appropriately filed under seal pursuant to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006).

Accordingly, Defendant submits that the *Lugosch* standard is met here, as protecting the privacy interests of the minor student in keeping confidential that child’s education and medical history constitutes a “compelling reason” to seal the record and outweighs the public’s interest in access. *Lugosch*, 435 F.3d at 121 (countervailing factors include, among others, the privacy interests of those resisting disclosure). This office has conferred with Plaintiffs’ counsel, who consents to this request. Accordingly, Defendant respectfully requests leave to file the certified administrative record in this action under seal.

Thank you for your consideration of this request.

Respectfully submitted,

/s/ Jeffrey S. Dantowitz
Jeffrey S. Dantowitz
Assistant Corporation Counsel

Min Kyung Cho
Assistant Corporation Counsel

cc: Benjamin Jay Hinerfeld
Irina Roller
Plaintiffs’ counsel
(via ECF)

The request to file the administrative record under seal is GRANTED.

The Clerk of Court is respectfully directed to close the open motion at docket entry 23.

SO ORDERED.



Date: February 4, 2022

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE